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Supreme Court of the United States

October Term 1946

No. 1478

124

In the Matter of the Trust Created by Walter Butler under Written Indenture of Trust Dated June 18, 1920, with Builders Trust Company as Trustee;

In the Matter of the Trust Created by Walter Butler under Written Indenture of Trust Dated June 18, 1920, with Builders Trust Company as Trustee designated as the "Robert Butler Trust".

In the Matter of the Trust Created by Walter Butler under Written Indenture of Trust Dated June 18, 1920, with Builders Trust Company as Trustee designated as the "Effie Butler O'Connor Trust".

Builders Trust Company,

Petitioner,

VS.

Walter P. Butler, Helen W. Butler, Effie Butler O'Connor, William Vernon O'Connor, Rosemary O'Connor Doll, Walter Butler O'Connor and Richard O'Connor; Builders Trust Company and James R. Faricy, Co-Trustees of Trust created under Indenture of Trust on June 18, 1920, by Walter Butler for the benefit of Walter P. Butler, Robert Butler, Walter Butler III, Mary Butler and Catherine Butler,

Respondents.

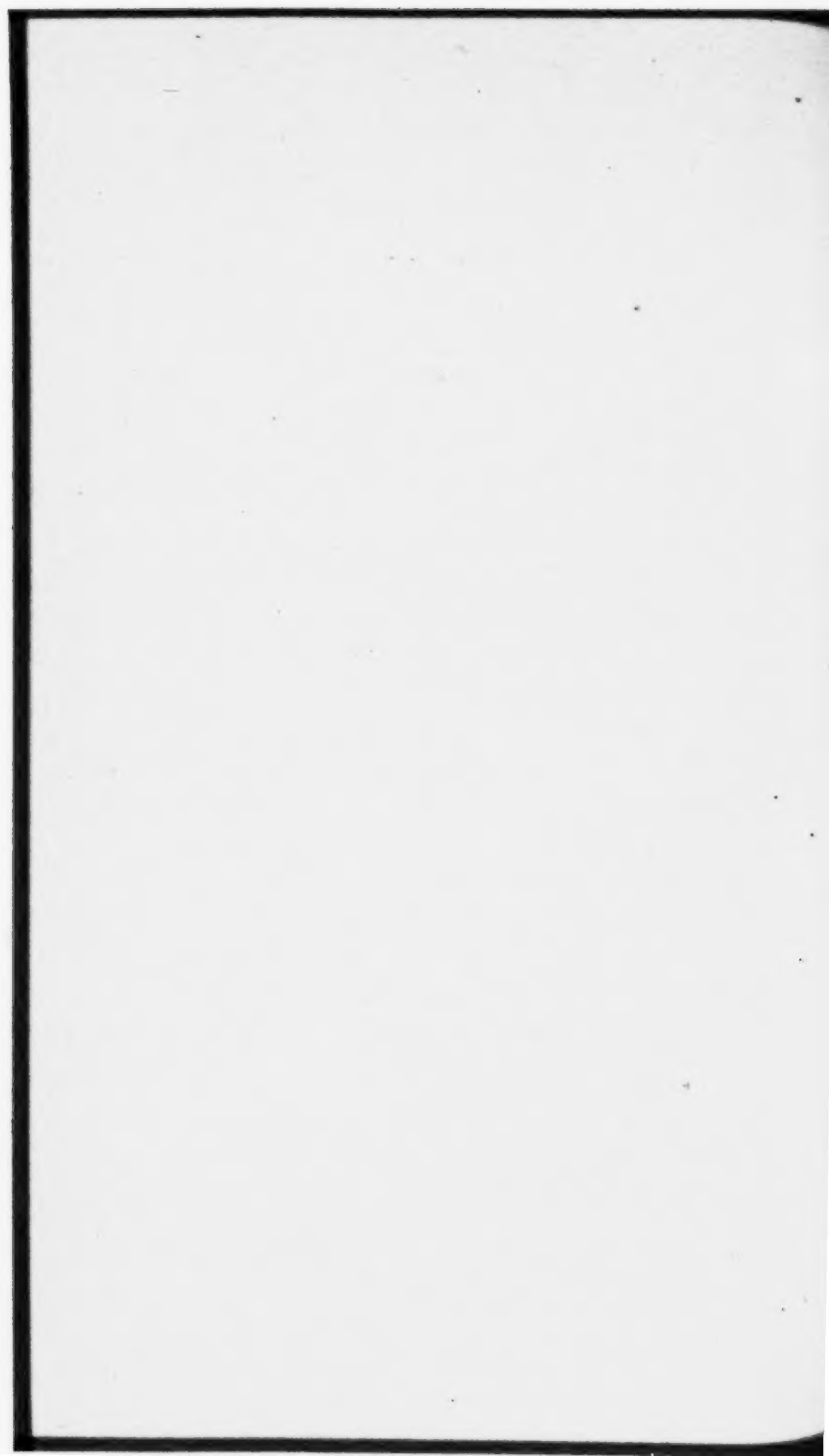
RESPONDENTS' BRIEF.

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1. The first part of the paper is devoted to a general discussion of the problem of the origin of life. It is shown that the problem is one of the most important and most difficult in the history of science. The author discusses the various theories of the origin of life, and shows that the most plausible is the theory of spontaneous generation. This theory is based on the fact that life is a complex of many different parts, and that these parts are all found in the same place. The author also discusses the possibility of life existing on other planets, and shows that this is a possibility which cannot be completely excluded.

2. The second part of the paper is devoted to a discussion of the problem of the evolution of life. It is shown that the problem is one of the most important and most difficult in the history of science. The author discusses the various theories of the evolution of life, and shows that the most plausible is the theory of natural selection. This theory is based on the fact that life is a complex of many different parts, and that these parts are all found in the same place. The author also discusses the possibility of life existing on other planets, and shows that this is a possibility which cannot be completely excluded.

3. The third part of the paper is devoted to a discussion of the problem of the origin of the human race. It is shown that the problem is one of the most important and most difficult in the history of science. The author discusses the various theories of the origin of the human race, and shows that the most plausible is the theory of spontaneous generation. This theory is based on the fact that life is a complex of many different parts, and that these parts are all found in the same place. The author also discusses the possibility of life existing on other planets, and shows that this is a possibility which cannot be completely excluded.

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RESPONDENTS' BRIEF.

STATEMENT OF THE CASE.

Petitioner, in the circumstances recited in its petition for writ of certiorari, filed its petition in the District Court of the State of Minnesota, Second Judicial District, County of Ramsey, asking for construction of certain provisions of trust agreements of which it was trustee. It alleged that throughout the period of administration beginning in 1920 it had incurred necessary expenses "in the nature of office expenses, clerk hire, attorney's fees and of other nature," and that it was about to file its accounts. It quoted two provisions of its trust instruments relating to expenses, the pertinent part of the controlling one reading:

"and all expenses, including compensation of the Trustees, shall be paid or provided for prior to any distribution of income or principal to the beneficiaries in this instrument designated and prior to the accumulation and addition of income to the principal or body of the trust estate."

Its prayer for relief was:

"Wherefore your petitioner as trustee of each such trust prays the order of this honorable Court adjudicating and accordingly instructing your petitioner as follows: That in respect of each item of expense heretofore and/or hereafter incurred by the said trustee * * * on account of office expense, clerk hire, attorney's fees, taxes and of other nature are and each of the same is allowable as a proper item of expense to the trustee in each instance."

There was a hearing. The various trust instruments were offered and received in evidence (R. ff. 385-449) and summaries of receipts and disbursements of the various trusts were submitted (ff. 377, 378, 475-480). There was testimony

describing in general terms the nature of the operations of petitioner. It was shown that petitioner paid office rent, telephone, light, stationery and vault rental expenses and paid income taxes on behalf of each trust, and there was a bond premium payable annually on account of one trust. None of these items is involved in the points made by the petitioner in this Court.

There was undisputed testimony coming from petitioner, that quarterly reports showing receipts and disbursements were delivered to each beneficiary and that at least annually the net income of each trust was determined and paid over to the beneficiary or assigned to accumulated income. Disbursements "such as your salaries and your rent and the like" were charged to corporate accounts, not to separate trust accounts (ff. 258-266), and no beneficiary was ever informed that there were charges to be made which were not disclosed in the quarterly statements which were rendered (ff. 362, 363).

The testimony as to the nature of the duties of the two employees whose salaries were the chief subject of dispute was complete, comprehensive and indisputable—they did all the work of the trust company, under the general supervision of its president. There were no other employees (ff. 185-197, 243).

The relevant part of the district court's opinion appears in Record of Proceedings in Supreme Court of Minnesota, part of the record here, on page 165 (ff. 490, 491) as follows:

"It is the opinion of the Court and the Court instructs the trustee that said provisions of said instruments mean and include such expenses incurred in the management and administration of each separate trust as are peculiar to each such trust. They do not cover or include expenses incurred or paid in the general conduct of the business of the trust company. To be specific, and giving effect to

the testimony adduced on the hearing, the trustee is instructed that the salaries paid to Messrs. Faricy and Erickson, now and for a long time past employed by the trust company, are and have been expenses incurred in the general operation of the business of the company. The rent paid by it for office space has been and is such a general business expense. So are expenditures by it for light, general and ordinary telephone service, and stationery. No part of such expenditures may be charged against the trust funds involved in this proceeding."

On appeal, the Supreme Court of Minnesota, in substance, ruled that the language of the trust instruments above quoted is unambiguous and should be given full effect to the end that no expense not paid or provided for prior to distribution of income to the beneficiaries would be allowed. It held that, on the evidence, no part of the salaries of petitioner's employees had been charged or deducted before distribution of income and hence would not be deductible in any account which might be rendered petitioner. As to future expenses, such as might be incurred and be paid or provided for before distribution of income to beneficiaries, the substance of the Court's decision was that, if the services of the two employees or other employees were to be of the kind which the testimony showed had theretofore been rendered by them, the expense so incurred would not be allowed.

Petitioner asserts that in these rulings the courts below went beyond the scope of its application to the district court and instead of ruling on the pure question of law presented by its request for instructions and, without affording it proper opportunity to submit evidence, gave not merely instruction that when its account should be presented credit or deduction on account of salaries paid to employees would not be allow-

able, but ruled upon and adversely decided claims which it had against the trust funds for the amounts disbursed by it in the hiring of those employees. It asserts that thereby its property rights in such claims have been destroyed, and that its right to its day in court has been denied, all in violation of the Fourteenth Amendment.

Petitioner also asserts violation of Section 10, Article I of the Constitution in that the Supreme Court of the State changed its rule of law theretofore applicable in the construction of trust instruments, thus impairing the obligations of the contracts expressed in the trust instruments. It is quite apparent upon the face of the decisions cited by petitioner that there has been no such change by the Court. Nothing further will be said concerning this assignment.

ARGUMENT.

As to the alleged violation of the Fourteenth Amendment, we submit that the petition, without going further into it, is without factual support.

Obviously, petitioner could not have intended or expected, when it asked the District Court to adjudicate and instruct that each item of expense incurred was an allowable item of expense under the terms of the trust instruments, that the Court would so adjudicate or instruct without hearing evidence, sufficient to satisfy it, as to whether the expenses were of a type or class allowable under a proper interpretation of the trust instruments. It must have expected that if an expenditure were of the type excludible in all circumstances, under the terms of the instruments the Court would so adjudicate and instruct. And it could not have expected an adjudication or instruction that expenses were to be allowed,

under a trust instrument declaring that expenses must be paid or provided for before distribution of income to beneficiaries, without showing that they were or might have been so paid, unless there should be interpretation by the Court of such a nature as to avoid the ordinary meaning of those words. No evidence offered by petitioner was excluded. No evidence was received over its objection. It is entirely clear that upon the matters ruled upon by the courts below, no other evidence was or would be available. It was shown that the two employees did all of the work of the petitioner. That made a complete and final showing. It was shown that, to the date of the hearing, accounts had been rendered and income distributed to beneficiaries without deducting payments made to the employees on account of their salaries. It is entirely clear that that showing could not truthfully have been different. The petition and the record here demonstrate that the courts below answered petitioner's request for adjudication and instruction in the setting in which it was presented. The adverse rulings are not the result of any lack of notice to petitioner as to the issue which the court was to determine, or any lack of opportunity to present evidence, nor were they based on any matters beyond the scope of the proceeding instituted by petitioner. The adverse rulings resulted wholly from an interpretation of the trust instrument different from petitioner's interpretation of it. Such a showing exhibits no basis for the granting of a writ of certiorari by this Court.

The dominating thought of petitioner seems to be that the Supreme Court strayed from the path of permissible procedure and violated Due Process when it treated the prayer for relief in its petition to the District Court as a part of its pleading. It says:

"The State Supreme Court Opinion overlooked the restrictive and definitive allegations of the petition, embodied therein, and merely considered certain general phraseology of the prayer as the basis of its conclusion expressed in said Opinion to the effect that the Petition 'called not only for answers to abstract questions of legal construction but for an adjudication of specific items of expense whereby such items were to be allowed or disallowed.' The prayer of the petition afforded no criterion for the determination of the nature and scope of the proceeding." (Petition, p. 32).

The argument follows, that the Court had no right to resort to the prayer.

We submit that the authorities cited or referred to by petitioner fail to support its contention. Its reliance (Petition, p. 33) is principally on two statements from Dunnell, Minnesota Pleading, Sec. 261, 2nd Ed. (The citation is typographically erroneous; it should be Sec. 123) :

"The demand for relief is no part of the cause of action and is not traversable."

* * * *

"The nature of the cause of action and the nature and extent of the relief awarded are determined by the facts alleged and proved and not by the demand for relief." (Sec. 261 Dunnell Minnesota Pleading Second Edition.) See also, in support of the foregoing excerpts, Minneapolis, Red Lake & Manitoba Railway Co. v. William W. Brown, et al., 99 Minnesota Reports 384, and Hoffman Motor Truck Company v. John Erickson, et al., 1914, 124 Minnesota Reports, 279, 281."

We think that the following short description of the cases cited by Dunnell and by petitioner, particularly in showing

the statements relied on in, their context and settings in the decisions, will indicate their inapplicability here.

In *Colstrum v. M. & St. L. Ry.*, 31 Minn. 367, the Court said, in a case dealing with a demurrer to the complaint:

"If in demanding judgment both for the possession of the premises, and also for an injunction restraining the continuance of the trespass upon them, the prayer asks for inconsistent forms of relief, the remedy is by motion and not by demurrer for misjoinder of different causes of action. The demand for judgment forms no part of the 'cause of action.'"

In *Hatch v. Coddington*, 32 Minn. 92, plaintiff, meeting a plea of former adjudication, endeavored to state a new cause of action in his reply. The Court in approving an order for judgment on the pleadings, incidentally referred to the prayer for relief in the following manner:

"There are no facts stated in the complaint showing that plaintiff is entitled to any such relief, and there is nowhere in the record any suggestion that any such relief is sought. True, the complaint asks for other and further relief, and it is also true that, where the defendant answers, the court may grant a plaintiff relief not demanded in the complaint. But the relief thus granted must be upon facts established by evidence admissible under the pleadings, and consistent with the case made by the complaint and embraced within the issue. The prayer for relief is not traversable, and forms no part of the cause of action."

In *Wildermann v. Donnelly*, 86 Minn. 184, a suit upon a promissory note, the answer alleged want of consideration and demanded that the note "be adjudged to be void, and that the same be delivered up, and cancelled." The decision was

that the action was not by that prayer of the answer converted from an action at law into one in equity. In the discussion the Court said:

"The demand for judgment in the answer was unnecessary, and did not characterize the action; did not transform it into an equitable one."

In *City of Albert Lea v. Knatvold*, 89 Minn. 480, the complaint was demurred to on two grounds, one that several causes of action were improperly united. In apparent response to an argument that the prayer for relief showed a misjoinder, the Court simply said:

"As often held by this court, the prayer for relief does not constitute a part of the cause of action."

In *Minneapolis, Red Lake & M. Ry. Co. v. Brown*, 99 Minn. 384, overruling a demurrer to complaint, based on the ground that several causes of action were improperly united, the Court said:

"As we construe the complaint, it states but a single cause of action. * * * The nature of the action and the nature and extent of relief is determined not by the prayer, but by the facts alleged. If the complaint states a cause of action which entitled the plaintiff to some relief, it is not subject to demurrer because all the relief demanded may not be obtainable."

In *Upton v. Merriam*, 122 Minn. 158, plaintiff brought an action involving title to real estate. The defendant had judgment. Under Minnesota Statutes a defeated plaintiff was entitled to a second trial as a matter of right in an action "for the recovery of real property." A demand for second trial was made and the question was whether the action was one

for the recovery of real property. Defendant had set up several defenses and counterclaims. One counterclaim alleged a cause of action in ejectment and sought recovery of possession. That counterclaim was dismissed by plaintiff before trial but defendant failed to amend her prayer for relief. The court, in ruling that that prayer for relief did not make the action one for the recovery of real estate, said:

"The fact that no amendment was made to the prayer for relief when the cause of action in ejectment was dismissed is not important. 'The nature of the action and the nature and extent of relief is determined, not by the prayer, but the facts as alleged.' Minneapolis, Red Lake & M. Ry. Co. v. Brown, 99 Minn. 384, 109 N. W. 817; Colstrum v. Minneapolis & St. L. Ry. Co., 31 Minn. 367, 18 N. W. 94; Hatch v. Coddington, 32 Minn. 92, 19 N. W. 393; City of Albert Lea v. Knatvold, 89 Minn. 480, 95 N. W. 309.

"There may be cases in which it is proper to consider the prayer for relief in determining the nature of the action, but the voluntary dismissal of the cause of action to recover possession of the property, leaves so much of the prayer as is based upon that cause of action without significance."

In *Hoffman Motor Truck Co. v. Erickson*, 124 Minn. 279, the ruling was that a plaintiff's right to relief was not limited by his prayer for relief:

"It is of no consequence that plaintiff's claims to be awarded equitable relief were broader than demanded in the complaint. G. S. 1913, Sec. 7753, requires a complaint to state demand for relief desired; but where defendant appears the relief granted is in nowise limited or controlled by the prayer, except that greater damages cannot be recovered, without amendment, than stated. Plaintiff must be awarded such relief, either legal or

equitable, as the facts proved required, regardless of the prayer."

In *Oehler v. City*, 174 Minn. 410, 414, overruling a demurrer to a complaint, the Court said:

"Even if the prayer for relief is broader than it should be, it is no part of the cause of action. It is not traversable. *Upton v. Merriam*, 122 Minn. 158, 142 N. W. 150, and cases cited; *M. R. L. & M. Ry. Co. v. Brown*, 99 Minn. 384, 109 N. W. 817. Demurrer will not lie because wrong relief is demanded in the complaint or greater relief than the alleged facts warrant."

The above cases do no more than state the law to be that a prayer for relief cannot change the nature of the case described in the pleading, and cannot restrict the relief which upon the whole case the pleader shows he is entitled to, and certainly they do not hold that where a statutory petition for instructions is presented to a court, the court may not look to the prayer for the purpose of ascertaining what instructions are sought.

Finally, the difference, in the circumstances here presented, between a ruling by the court that when accounts should be presented, certain items would be disallowed, if of the character shown by the evidence, and one determining on the evidence they were not allowable disbursements, is very slight indeed. The ruling "we find no error in the trial court's determination that the services of Erickson and Faricy as illustrated by their past employment activities as revealed by the record herein are not chargeable to the estate," followed as it is by the declaration that this did not preclude petitioner from showing as to activities and expenditures, paid or incurred before distribution of income, that services were ren-

dered beyond the ordinary ministerial activities of employees, which might be allowable (R. p. 173, ff. 506, 507) is substantially, if not exactly, in the form which petitioner contends all rulings should have been. Theoretically it left the case open for the presentation of evidence. Actually it did not. The effect was to declare that if petitioner had made expenditures of a type not disclosed by the evidence, they would be allowed or disallowed as the case might warrant when the accounts should be presented. As to expenditures of which the Court was advised, some were allowable and some were not. Whether they be called allowances of claims, or disallowance of claims, or rulings advising petitioner that expenditures made by it would be allowed or disallowed when its accounts should be presented is a distinction without substance. The Court could well have held, without reference to the prayer of the petition, that the proceeding instituted by the petitioner called for or permitted a ruling in the one form or the other as in its judgment and in the proper administration of justice, the record, as made, warranted or required.

Respectfully submitted,

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